

**West Virginia Board of Public Works  
Wednesday, August 3, 2011 – 9:00 a.m.  
Governor’s Cabinet and Conference Room  
Minutes**

**Attendees:**

Members

Gus R. Douglass, Commissioner of Agriculture  
Natalie E. Tennant, Secretary of State  
Darrell V. McGraw, Jr., Attorney General  
John D. Perdue, State Treasurer  
Dr. Jorea Marple, State Superintendent of Schools  
Mack Parsons, Senior Deputy State Auditor for State Auditor Glen B. Gainer III  
G. Kurt Dettinger, General Counsel for Acting Governor Earl Ray Tomblin

Guests

Dawn Warfield, Attorney General’s Office  
Sandy Marinacci, Department of Agriculture  
Robert Paulson, Department of Administration  
David Hildreth, Department of Administration, Real Estate Division  
John McHugh, Division of Highways  
David Neil, Division of Highways  
Stephen Lippiello, WV Northern Community College  
Danny Ellis, Treasurer’s Office  
Ashley Summitt, Secretary of State’s Office  
Sheryl Webb, Secretary of State’s Office  
Ashley Parsons, Secretary of State’s Office  
Judy Cooper, Secretary of State’s Office

The West Virginia Board of Public Works met on Wednesday, August 3, 2011 at 9:00 a.m. in the Governor’s Cabinet and Conference Room of the State Capitol Complex. The meeting was called to order and chaired by Commissioner Douglass. A quorum of members was established.

The first item on the agenda was the approval of the minutes from the April 6, 2011 West Virginia Board of Public Works meeting. Treasurer Perdue moved to approve the minutes with Kurt Dettinger seconding. The motion carried.

The second item on the agenda was discussion of the following deeds listed 1 through 6 seeking approval by the Board of Public Works.

1. Deed between the West Virginia Department of Transportation, Division of Highways and Sun Valley Public Service District, dated May 3, 2011, approved as to form by the Attorney General’s Office June 15, 2011.

2. Deed between Shepherd University Board of Governors, on behalf of Shepherd University and the West Virginia Department of Transportation, Division of Highways, dated August 11, 2010 (Parcel No. 1-1), approved as to form by the Attorney General's Office April 29, 2011.
3. Deed between the Shepherd University Board of Governors, on behalf of Shepherd University and the West Virginia Department of Transportation, Division of Highways, dated August 11, 2010 (Parcel No. 1, Tracts 2 & 3), approved as to form by the Attorney General's Office April 29, 2011.
4. Deed between the Development Authority of Mercer County, Inc. and the West Virginia Department of Transportation, Division of Highways, dated May 24, 2011, approved as to form by the Attorney General's Office June 14, 2011.
5. Deed between the Marion County Building Commission and the State of West Virginia, by and through the Department of Administration, Successor in Function to Department of Finance and Administration, approved as to form by the Attorney General's Office June 14, 2011.
6. Agreement of Purchase and Sale and Deed (Exhibit E) between The Ohio County Development Authority and the West Virginia Northern Community College, approved as to form by the Attorney General's Office May 31, 2011.

Secretary Tennant asked a question concerning deed number 1. Since this deed is listed as phase two, does that mean that phase one of the sewer line extension is complete? John McHugh addressed the Board. He said phase one is complete and this property is needed for a lift station and some drainage. Treasurer Perdue made a motion to approve deed number 1 with Secretary Tennant seconding. The motion carried.

Secretary Tennant asked what the purpose for the property detailed in deed number 2 would be. John McHugh explained that the purpose for the property in deed 2 and deed number 3 is in connection with the construction of the James Rumsey Bridge in Shepherdstown. These would complete the conveyance. Secretary Tennant asked if there were any existing utility rights of way contained in deeds 2 and 3. Kurt Dettinger stated that the deeds do state that the conveyance is made subject to any existing rights of way and easements, but he thought that was standard language. John McHugh verified that it is standard. Treasurer Perdue made a motion to approve deed number 2 with Secretary Tennant seconding. The motion carried.

Treasurer Perdue made a motion to approve deed number 3 with Mack Parsons seconding. The motion carried.

John McHugh addressed the Board concerning deed number 4. He stated that this is for a right of way. Secretary Tennant asked how this works since it is a temporary easement. Mr. McHugh explained that as soon as the project is complete, the property reverts back to Mercer County. Treasurer Perdue made a motion to approve deed number 4 with Kurt Dettinger seconding. The motion carried.

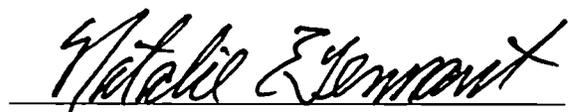
David Hildreth addressed the Board concerning deed number 5. This transfer concerns a contract of lease/purchase the State entered into in 1987 for a ten year term. The contract was fully paid out in 1997. However, through oversight, the property was never conveyed to the Dept. of Administration as required in the lease/purchase. This is a belated conveyance. Secretary Tennant asked why the deed was not signed. Mr. Hildreth stated they are asking for approval prior to signature. Treasurer Perdue made a motion to approve deed number 5 with Kurt Dettinger seconding. The motion carried.

Dr. Marple asked a question concerning deed number 6. She stated that it was her understanding that the property detailed in this deed would be used for the development of vocational programs. She asked if all spaces located in public school vocational programs had been utilized. Stephen Lipiello verified that was correct. He explained that there are three parcels associated with this project. One parcel will be used exclusively as an applied technology center. There is a great deal of industrial maintenance and related training that will go on. Vocational training will be incorporated as well. They are entering into agreement with various schools to provide that type of training. Treasurer Perdue asked if the resolution that has been presented had been approved as to form by the Attorney General's Office. Dawn Warfield said it had. She stated there was an item that she wanted to bring to the attention of the Board. The deed (exhibit e) contains a non-standard clause. It states that the Grantor reserves all of its mineral rights. That's not usually found in these kinds of transactions. Treasurer Perdue asked if that meant they could sell the mineral rights. Ms. Warfield said she thought that was addressed in the sale agreement. Treasurer Perdue asked if the Ohio County Development Authority was going to keep the mineral rights. Mr. Lipiello stated that it was his understanding that the College had surface mineral rights, but the College does not have rights to anything underground. Secretary Tennant asked if there were buildings on the property. Mr. Lipiello said there were. He explained that the existing buildings are going to be refurbished and used. At this time, there are only plans for one additional build. That would take a building upward not out. Secretary Tennant asked if due diligence has been done on the buildings. Mr. Lipiello said yes. There have been environmental and structural studies done. Both parties in the agreement are comfortable with everything. Treasurer Perdue stated he had a problem with the precedence set by approving a transfer without the mineral rights. He said he would like the issue to be studied. Attorney General McGraw made a motion to table the approval of the agreement of purchase and sale and deed until the Board can learn more about the reservation of the minerals. Treasurer Perdue seconded the motion. Commissioner Douglass asked if there was discussion of the motion. Secretary Tennant asked what the timeline is for the project. Mr. Lipiello said they are at the timeline now. The sooner this can be resolved the better. Secretary Tennant asked if there had been any studies about the mineral rights or what the Ohio County Development Authority intended to do with them. Mr. Lipiello said there had not been. He stated that in negotiations for the agreement, the easement was a much bigger issue than the minerals. Treasurer Perdue said he supports the Attorney General's motion to table the issue until the Board can learn more. Secretary Tennant asked what type of questions he would like answered. She explained that if the Board chooses to table it, they should have specific questions ready that need to be answered for approval. Kurt Dettinger stated it would be helpful to know who owns the mineral rights. When the minerals were severed, it may not be the Grantor of this deed. It would also be helpful to know whether or not the mineral rights have been leased already. Commissioner Douglass restated the

Attorney General's motion to table this issue for further research. The motion carried. Approval of the agreement of purchase and sale and deed was put on hold.

Discussion of the issue of mineral rights continued. Attorney General McGraw stated that if the Attorney General's office researched this, it would require assigning Special Assistant Attorneys General that specialize in property transactions. This would result in the Board getting a bill. Secretary Tennant asked if questions could be considered and prepared for WV Northern Community College so they could do some of the leg work on the research. Dawn Warfield stated that there is already a Special Assistant Attorney General appointed to this transaction. Kurt Dettinger added that part of the purchase and sale agreement requires a title commitment, which will lay out some of the various severances of property throughout the history of the period under review. Some of the information will be readily available. Treasurer Perdue made a motion for a teleconference meeting of the Board of Public Works after the research of this issue has been completed to speed up the process of approving the agreement. Dr. Marple seconded the motion. Commissioner Douglass called for discussion on the motion. Secretary Tennant questioned whether a conference call with the Board of Public Works had ever been done and if that constituted a proper meeting. She asked Attorney General McGraw whether votes could be made by conference call. Attorney General McGraw stated that if you use the Legislative forum, there is a significant chance that voting by conference call would be illegal. The same is true for the Supreme Court. Dr. Marple added that you limit public access any time you have a conference call. Treasurer Perdue withdrew his motion for a teleconference meeting. Dr. Marple withdrew her seconding of the motion.

With no further business, Dr. Marple made a motion to recess the meeting with Kurt Dettinger seconding. In discussion, Secretary Tennant stated that in terms of opening the meetings to the public, she would like to webcast future meetings. Many other public meetings have been webcast. Commissioner Douglass called a vote on Dr. Marple's motion. The motion carried. Commissioner Douglass recessed the meeting until the date of the next meeting is determined.



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Natalie E. Tennant, Secretary  
of State and Ex-Officio  
Secretary of the West Virginia  
Board of Public Works